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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,283

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Gregory Piskun

P29-005

3044

7590

05/22/2006

R. Neil Sudol
714 Colorado Avenue
Bridgeport, CT 06605-1601

EXAMINER

KASZTEJNA, MATTHEW JOHN

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 10/801,283	Applicant(s) PISKUN, GREGORY	
	Examiner Matthew J. Kasztejna	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-30, 35-47, 50 and 53 is/are rejected.
- 7) ☒ Claim(s) 31-34, 48, 49, 51 and 52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Disposition of Claims

In response to the amendment filed on March 1, 2006, new claims 48-53 are acknowledged. The current rejections of the claims *stand*. The reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-30, 35-47, 50 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,655,698 to Yoon in view of U.S. Patent No. 4,577,787 to Leisenring.

In regards to claims 20-29, 30, 44, 50 and 53, Yoon discloses a surgical instrument comprising: an instrument shaft provided at a distal end with two jaws 20 and 22 at least one of the jaws including a C- or U-shaped clamping member movable alternately away and towards the other of the jaws for clamping and occluding tissues (see Fig. 1), but is silent with respect to an anoscope used in combination with the tissue occlusion device. However, Yoon teach of an operating instrument used for applying a plurality of staples to body tissue in a substantially simultaneous manner. Leisenring teaches of an anoscope including a hollow body defining a longitudinal channel, the hollow body being closed at a distal end and at least partially open at a

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proximal end, the hollow body having a sidewall provided with a window spaced from at least the distal end (see Fig. 1). Furthermore, Leisenring discloses hinged sections, wherein the slides can be partly withdrawn and out of the way of the operator, thus permitting ready access to the diseased parts and permitting treatment of the same with various operating instruments (see Col. 2, Lines 85-92). It would have been obvious to one skilled in the art at the time the invention was made to use the tissue occlusion device in combination with the anoscope in order to provide an operator clear access to lesions within the colon, as taught by Leisenring, and thus more effective removal of the lesions. The combination of both Yoon and Leisenring results in an apparatus which is inherently capable of performing the recited method claims.

In regards to claims 36 and 46, Yoon discloses a surgical instrument wherein the hemorrhoid occlusion device further includes a hemorrhoid occlusion component mounted to the jaws for acting on tissues gripped between the jaws, to couple the tissues to each other (see Col. 2, Lines 57-67).

In regards to claims 35 and 47, Yoon discloses a surgical instrument wherein the occlusion component is a stapling mechanism (see Col. 3, Lines 1-10).

In regards to claim 37, Yoon discloses a surgical instrument wherein the occlusion component is a stapling mechanism including a staple cartridge removably mounted to one of the jaws (see Col. 3, Lines 30-50).

In regards to claim 38, Leisenring discloses an anoscope wherein the anoscope further includes a shutter member mounted to the hollow body to cover the window during a positioning of the anoscope in an anal canal, the shutter member being

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movable relative to the hollow body to uncover the window to permit hemorrhoidal tissues to protrude through the window into the channel (see Col. 2, Lines 85-90).

In regards to claims 39 and 45, Leisenring discloses an anoscope wherein the hollow body has a longitudinal axis, the sidewall being formed with a bulging portion located on one side of the axis and extending from the proximal end partially along a length of the sidewall towards the distal end, the window being located in the bulging portion (see Fig. 1).

In regards to claims 40-41, Yoon discloses a surgical instrument wherein the jaws are mounted to the shaft so as to remain parallel to one another during opening and closing strokes of the jaws (see Fig. 1).

In regards to claims 42-43, Yoon discloses a surgical instrument wherein the jaws are parts of a cartridge removably attachable to the shaft (see Col. 3, Lines 10-57).

Allowable Subject Matter

Claims 31-34, 48-49 and 51-52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed March 1, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

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where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Leisenring teaches of an anoscope including a hollow body defining a longitudinal channel and having a sidewall provided with a window spaced from at least the distal end (see Fig. 1), wherein the slides can be partly withdrawn and out of the way of the operator, *thus permitting ready access to the diseased parts and permitting treatment of the same with various operating instruments* (see Col. 2, Lines 85-92). Thus applicant is incorrect in saying the reference only mentions using a needle. It would have been obvious to one skilled in the art at the time the invention was made to use the tissue occlusion device of Yoon in combination with the anoscope in order to provide an operator clear access to lesions within the colon, as taught by Leisenring, and thus more effective removal of the lesions. The speculum could inherently be made of a larger size to accommodate the tissue occlusion device of Yoon, thus preventing any blockage by the curved space of the speculum and making it possible to effectively use the tissue occlusion device inside the Leisenring speculum. Furthermore, it is well-known that a needle, similar to a staple, pierces tissue and thus is capable of causing trauma to tissue.


Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK 

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